

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON

BRIAN KENNETH BELCHER,

Plaintiff,

v.

Case No. 2:18-cv-01521

**SOUTH CENTRAL REGIONAL JAIL,
C.O. HOLIDAY, and DESHAUN MOSES,**

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

This matter is assigned to the Honorable John T. Copenhaver, Jr., Senior United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On December 17, 2018, the plaintiff filed a Complaint (ECF No. 2) alleging claims concerning an inmate on inmate assault and his conditions of confinement at the South Central Regional Jail in Charleston, West Virginia. The plaintiff also filed an Application to Proceed Without Prepayment of Fees and Costs (ECF No. 1), which was granted on June 28, 2019. The undersigned's Order further advised the plaintiff that his Complaint was insufficiently pled.

Thus, the undersigned's Order further directed the plaintiff to file an Amended Complaint by July 12, 2019. The Order and Notice further notified the plaintiff that the failure to comply therewith would result in the undersigned's recommendation to the

presiding District Judge that this matter be dismissed for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure.

The plaintiff has failed to file an Amended Complaint as ordered and has failed to communicate in any way with the court. Thus, this court is unable to move this matter forward. Accordingly, the responsibility for the delay in the progress of this matter is entirely on the plaintiff; and dismissal appears to be the only appropriate sanction. However, because the defendants were never served with process, a dismissal without prejudice may be less drastic.

RECOMMENDATION

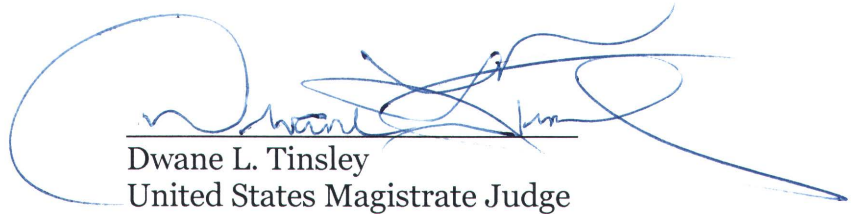
The undersigned proposes that the presiding District Judge **FIND** that the plaintiff has failed to prosecute this civil action. Therefore, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., Senior United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the plaintiff shall have fourteen days (filing of objections) and then three days (service/mailling), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Copenhaver.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff.

August 29, 2019



Dwane L. Tinsley
United States Magistrate Judge